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Harry E. Kapleau
Wiretapping Incident



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HOUSE OF REPRESENTATIVES
COMMITTEE TO INVESTIGATE THE ADMINISTRATION OF JUSTICE
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

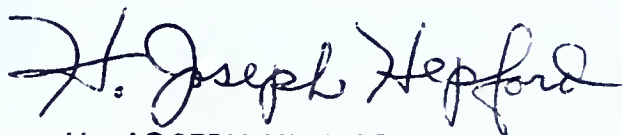
October 2, 1974

The Honorable Kenneth B. Lee
Speaker
House of Representatives
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

Dear Mr. Speaker:


Attached is a report entitled "Harry E. Kapleau Wiretapping Incident," together with conclusions and recommendations unanimously approved by the Committee to Investigate the Administration of Justice under House Resolution No. 21.

Respectfully submitted,



H. JOSEPH HEPFORD
Chairman

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HARRY E. KAPLEAU WIRETAPPING INCIDENT

On March 22, 1973, an exclusive radio news release by Jim Dorris, Radio Station WCAU, announced that a bugging device had been located on the telephone of Harry E. Kapleau, Chairman of the Milk Marketing Board, Department of Agriculture, last September. The story continued that Governor Shapp's office had been notified of this incident, as had the Pennsylvania State Police, at the time of the discovery of the device many months before in September 1972.

This incident remained unknown to Mr. Kapleau, to the F.B.I., or anyone else, outside of the Governor's Office, the Pennsylvania State Police and the Bell Telephone Company, until publicized by the news media.

Joseph Tenetylo, PBX repairman, Bell Telephone Company, testified he was given a repair order for the telephone of Harry E. Kapleau, Chairman of the Milk Marketing Board, Department of Agriculture. The repair order was to correct a non-functioning buzzer on Kapleau's phone. In the process of working on the call director in Kapleau's office, a device fell out on the desk when he removed the cover on the call director. This device was foreign to normal telephone equipment and he removed the device based on instructions that were in effect in the telephone company inasmuch as he did not readily recognize this piece of equipment. This repair of Kapleau's telephone occurred on September 1, 1972, late in the afternoon, which was the Friday prior to the Labor Day weekend.

Tenetylo took no action on September 1 and did not notify anyone. He simply kept the gadget in his truck. When he saw his supervisor, Marlin Peter, the following Tuesday morning, September 5, he turned the device over to him.

Clarence Barnes, Senior Security Agent, Bell Telephone Company, received information concerning the location of this device in Kapleau's office at approximately 9:00 A.M. on September 5, 1972. He made arrangements for this instrument to be hooked up on one of the office telephones; and using a standard FM receiver, verified that in fact it was an FM transmitter. The technical staff examined the instrument and furnished a detailed report. The device was 2 inches x 1½ inches x 3/4 inch. It had a range of 1,000 feet and was in good working condition. It operated on approximately 97 megacycles, contained two transistors, seven resistors, and a small integrated circuit board - printed circuit, two coils and two diodes.

After the examination, the device was closed by simply putting a piece of tape around it in order to hold the cover on tight. It was in working order. No serial number or manufacturer's name were found on the device. No initials of those who had handled the instrument were found on the device. Barnes estimated the actual value of the parts as being worth approximately \$3.00, but guessed the instrument would sell on the market for approximately \$150.00. It was a rather sophisticated and efficient device.

On the morning of September 6, because of the seriousness of this whole affair, Barnes contacted Bell Telephone headquarters in Philadelphia and discussed the situation with Robert Reynolds, the Assistant Controller. They decided that he would contact Frank Ertz, Public Affairs Supervisor in Harrisburg, and that Ertz would have the responsibility of visiting the Governor and apprising him of the situation. Reynolds would attempt to talk to the then State Police Commissioner, Rocco P. Urella. But, in the absence of Colonel Urella, he talked to Lt. Colonel Joseph Dussia by telephone.

Frank Ertz met with the Governor on September 6 and notified the Governor of the discovery and that the telephone company was turning the information and the evidence over to the State Police.

Ertz stated the Governor was very concerned and asked for a description of the device, which was furnished to him as given to Ertz by the telephone company security people. He also explained to the Governor that it was a transmitter that would transmit only a limited distance.

While talking with the Governor, Ertz told him that they were in the process of giving the information to the State Police. The Governor's reaction was "Fine... maybe we should leave it on there so that we can catch the party or parties responsible for installing it." The Governor mentioned that Mr. Kapleau would have to be notified

if Bell Telephone permitted the device to be left in place. Ertz told the Governor that, unfortunately, the device had been removed.

The Governor asked if Bell Telephone would work with the State Police to re-install the device. The Governor was told the telephone company would be glad to cooperate.

Ertz immediately went to Pennsylvania State Police Lt. Colonel Joseph Dussia's office. The security people from Bell Telephone Company had not yet arrived. Ertz told Dussia what was discussed at the Governor's Office.

When Clarence Barnes and another security agent from the telephone company arrived, they showed the device that had been found on Kapleau's phone to Dussia. They told Dussia the device had been tested and thoroughly analyzed, and furnished a technical description thereof.

Ertz then told Dussia of the Governor's suggestion concerning the possible re-establishment of the tap, with a view to finding out who was responsible therefor.

The Bell Telephone Company had not notified the F.B.I. of the wiretap device. Although Ertz was not sure what procedure should have been followed, the company would take up the problem of procedure to be followed in the future and report to the Committee.

Former Deputy Commissioner, Lt. Colonel Joseph Dussia, Pennsylvania State Police, testified about his meeting with Messrs. Frank Ertz and Clarence Barnes, and the other security officer, all of the Bell Telephone Company, on September 6, 1972.

Following this meeting, Dussia prepared a memorandum, dated September 6, 1972, reporting the information that had been furnished.

When Colonel Urella returned to his office, Dussia gave him the memorandum and the transmitter. He asked if Urella wanted him to have the Detective Division investigate the matter. The Colonel said he would handle the investigation.

Dussia heard no more about the matter for approximately two weeks when he was contacted by a representative of the Bell Telephone Company about the progress of the investigation. Keeping this individual on the line, Dussia told Colonel Urella of the telephone company's inquiry. Urella replied, "We did not install it on the phone. We are making an investigation into it." Dussia relayed this information to the caller, whom he believed was Barnes.

Colonel Urella testified that sometime after Labor Day, anywhere from a week to ten days after this tapping device was found on Kapleau's phone and called to his attention, the Governor wanted to see Urella. The Governor asked him to conduct an investigation. The Governor said he had not notified Kapleau, and he thought at this particular time it would be best not to notify anyone in an effort to apprehend the perpetrators. The reinstallation of the device and its legality were discussed.

Urella assigned one of the internal investigators to make an intense surveillance of the area, looking for a monitor or receiver, to note license numbers, and to stay on this particular investigation although the device was not to be reinstalled and there would be no transmissions. He first assigned Lieutenant Herman Faiola to check Kapleau's office and, subsequently, assigned Lieutenant Stephen Luchansky to assist Lieutenant Faiola.

Colonel Urella believed he first received word concerning the location of this wiretapping device from the Governor, and later from a report or memo from Lt. Colonel Dussia.

Colonel Urella kept the device in his desk drawer for at least two months, and then opened it up to see if there were any serial numbers in it. Urella said that it had no legal value, and he didn't want it where anyone could possibly get hold of it or ever imply that it had been used again, so "I destroyed it after I took it apart." Colonel Urella took the component parts out of the instrument to make certain it could not be used again and discarded it into the wastebasket.

Urella said that he did not open a file on the Kapleau tap personally because he did not do the investigation himself; but if any positive information had developed, he would open up a file and build up a case. He did not know whether a file had been opened on this matter. As he delegated those assignments, he would not know if

there were reports. Any important development would be reported to him by the investigators. Urella acknowledged that he received a memo from Dussia, and he believed it should be in central records files.

In his following testimony, Colonel Barger, Urella's successor, said that nothing was found in the files of the State Police relating to the Kapleau tap after he became head of the State Police, but that a memo dictated by former Lt. Colonel Dussia had been reconstructed and a copy made available to the Committee.

Urella had not made any memos for the file relative to conversations with Kapleau and the Governor. The discussion about the tap being reinstalled was just very general. There was no discussion of any possible suspects.

Urella then discussed overlapping or duplication of investigative effort, and stated the Pennsylvania State Police did not notify the Federal Bureau of Investigation concerning the tap on Kapleau's phone.

Harry E. Kapleau testified that he first learned that there was something wrong or that a device had been installed on his phone sometime in September when he received a telephone call from Urella asking him to come to the Colonel's office. On arriving at the Colonel's office, Urella removed a small device from his desk and said that this had been found in Kapleau's phone. Kapleau said that this was the first notification he had of the location of this device. Urella told him that the device was a transmitter,

that it would transmit up to 1200 feet, that it was an old device, not sophisticated, and there was some question whether it was operative. Kapleau had a recollection that the Colonel said that because his buzzer was not working properly, it might have been improperly installed and would not have transmitted any of the conversations. Kapleau never discussed the incident with Governor Shapp.

After Urella had been fired, Lt. Colonel Dussia stated that he had discussed the Kapleau bugging incident with Governor Shapp. Dussia asked the Governor what happened to the transmitter. The Governor said that somebody told him that the equipment was obsolete.

Lieutenant Herman J. Faiola was asked what instructions he received and what conversation he had with Colonel Urella concerning the investigation of the wire-tapping incident at Harry E. Kapleau's office. Faiola was first told to get the "sweep equipment" and go up and search Kapleau's office. He did go to Kapleau's office and took off the wall switch, looked in the thermostat, took the cover off the phone, and scanned the room with a little black scanner. He was not shown the device which had been found in Kapleau's phone and was not given any details.

Faiola did not get the impression that he was to be in charge of any investigation, other than to go up and double check as Bell Telephone had already started something.

Lieutenant Faiola received no particular instructions as to what he was to do or how to catch the people responsible for tapping Kapleau's phone, other than to make a surveillance and a periodic check for anything suspicious.

Faiola had no training in the operation of the kit that was to be used in the sweep, and learned what he knew from a pamphlet and a description of how to use the machine from other men who had used it. Faiola classified himself very much of an amateur in the operation of this equipment.

Lieutenant Stephen Luchansky testified that he was in Colonel Urella's office when the Colonel told him he had received a telephone call from Mr. Kapleau requesting another sweep of his office to make sure that there were no other devices in the area of his office. Lieutenant Luchansky left Colonel Urella's office and asked Lieutenant Faiola, who had previously conducted a sweep of Kapleau's office, to accompany him. The two of them rechecked Kapleau's office. Luchansky was merely told to again sweep Kapleau's office and to check the area for a person or persons sitting in automobiles or trucks to see, by observation, if anyone was trying to pick up conversations. Other than sweeping the office and riding around and looking for suspicious persons sitting in cars, no other investigation was conducted by him. The total time he spent on this investigation was between six and eight hours.

Lieutenant Luchansky admitted he had never had any special training in the use of special equipment. The only knowledge he had picked up was from reading pamphlets and practice and was far from an expert.

Luchansky, asked if he had a "full, frank, and free investigation and turned on with all the forces at his command and energies and abilities and experience to break this case," replied that he had not.

J. Shane Creamer, Attorney General at the time, stated he knew nothing about the Kapleau incident until he read about it in the newspapers sometime during the spring of 1973. He stated he had never been told anything by the Governor.

CONCLUSION

From the foregoing, it is obvious that there was an incident of actual wire-tapping of the telephone instrument in the office of Harry E. Kapleau, Chairman of the Milk Marketing Board, Department of Agriculture, which was discovered on September 1, 1972.

The testimony received brings out rather clearly the lack of policy instruction to telephone personnel outlining procedures to be followed upon discovery of a device on a telephone in violation of both state and federal laws.

Testimony clearly shows the Governor was notified of the discovery of this instrument, as were the Pennsylvania State Police. There was no real investigation conducted to determine the person or persons responsible for the installation of the device, but rather there was a sham and charade by checking Kapleau's office and the surrounding area some two weeks or more after the device had been located and removed from Kapleau's phone.

Despite the fact that the Governor was fully apprised of this incident of wiretapping of one of his appointees, there appears to have been no insistence by the Governor's Office or the State Police for an effective investigation. Similarly, although the head of the State Police was fully informed, he did nothing beyond seeing to it that a perfunctory move was made and did not even open a file. Later search developed that Colonel Dussia's memorandum of the discovery of the tap had disappeared.

Neither the Governor, the State Police, nor the telephone company notified the Federal Bureau of Investigation. That agency has jurisdiction of wiretappings, which are in violation of federal law.

J. Shane Creamer, the Attorney General at the time of the wiretapping incident, was never advised by the Governor nor anyone else that the incident had occurred. The entire action seems to have been designed to anesthetize and bury the evidence and facts in an unmarked grave.

The Committee is compelled to conclude that the executive and law enforcement meanderings following the discovery of the Kapleau tap constitute a classic case of mis-, mal-, and non-feasance. From the tip of the iceberg belatedly viewed by the Committee, the unseen portion emerges in the shape of a mosaic of question marks as yet unanswered:

1. Why was the tap placed on the telephone of the Chairman of the Milk Marketing Board?
2. At whose direction was it installed?
3. What did a listener expect to hear?
4. When it was discovered, why was it removed before there was an effort to identify those responsible?
5. Was the underworld or organized crime involved?
6. Why wasn't the F.B.I. called in immediately?



7. Why didn't the Governor inform Kapleau that his phone was tapped?
8. Why was the State Police inquiry performed by unqualified personnel?
9. Why were there no reports or files?
10. Why did then Commissioner Urella claim to have destroyed the evidence?
11. Why did Commissioner Urella decline to testify about the matter on Fifth Amendment grounds?
12. Did Urella know why the tap was installed?
13. Was it installed by Pennsylvania State Police personnel?
14. Was the device actually destroyed by Urella?
15. Was the device used a short time later in the King of Prussia wiretapping?
16. Why didn't the Governor inform his Attorney General or follow up to learn of the results of the State Police action in a felony involving an espionage attempt upon his appointee administering one of the major industries in Pennsylvania?
17. Was there a coverup?

RECOMMENDATIONS

During the hearings, the Committee suggested to officials of the Bell Telephone Company of Pennsylvania that the instructions to employees finding taps on telephones of subscribers be made clear and unequivocal so as to permit law enforcement officials prompt and unfettered latitude to examine the installation while still operating and to take appropriate investigative steps to identify, apprehend and prosecute those responsible for apparent violation of state and federal laws. The Bell Telephone Company of Pennsylvania complied without delay, conferred with Committee staff and, after researching procedures in other states, notified the Committee of the adoption of a model manual of procedures for employees insuring the preservation of the evidence and alerting the F.B.I. and Pennsylvania State Police in future cases. The Committee commends this implementation of the suggested revision of policy.

Having had from then Commissioner Urella the benefit of an horrendous example of mishandling of evidence where he destroyed the key to a conviction by tossing the "bug" into his wastebasket, it is recommended that the Pennsylvania State Police review and revise the training programs of personnel so that there is an awareness in the proper handling, identifying, preserving, maintaining a chain of custody, and utilizing items of evidence to the fullest extent to defeat the criminal element.

Upon reviewing the scope and effectiveness of Pennsylvania statutes covering wiretapping and eavesdropping in the King of Prussia and Kapleau inquiries, the



Committee found that existing Pennsylvania anti-wiretapping statutes do not embrace a situation where an eavesdropping device (bug) is used in a place where entry is accomplished by a trespass.

With the unanimous endorsement of the Committee members, HB 1588, Printer's No. 2045 was introduced to outlaw bugging by trespass. By amendment on the floor of the House, the bill has been enlarged so as to encompass provisions generally outlawing wiretapping and bugging, and the revised bill is HB 1588, Printer's No. 3524. It was placed on the final passage postponed calendar on July 12, 1974.

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